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Statutory Review of the Residential (Land Lease) Communities Act 2013,
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The Officer-in-Charge.

As a homeowner in a RLLC village, I am pleased to contribute to the Review of the RLLC Act.

Of greatest concern to living in my village is the unexplained and unjustified rise in site fees beyond that expected to account for general price inflation as measured by the Cost Price Index. It is very apparent that the existing legislation provides little or no protection from the gouging and predatory actions of a lot of owners of villages such as mine. The increases are now of a size that site fees are becoming an untenable financial burden to remaining in the village and a barrier to the sale of my home. This will cause implications for older residents and their families when the need for aged care arises. Obviously, this will in turn become a problem governments and society at large will have to deal with soon.

In the past nine years, village site fee increases have exceeded CPI increases by over \$700,000. Aggravating my concern is that the operator has never offered an understandable explanation for why this increase has exceeded CPI. Over the past 9 years it is not apparent that the owner of my village has incurred any costs, for which homeowners are responsible, that could substantiate the \$700,000 blowout in costs above the CPI.

Our village Residents Committee has investigated this issue and prepared a report titled "Site Fee Increases Searching for an Explanation". The findings of this report have been outlined to me and I fully endorse its findings and recommendations for changes to the Act.

The Residents Committee report forms part of my submission. An outline of that submission is attached.



18th January 2021

Submission

To Statutory Review

Residential (Land Lease) Communities Act 2013 No 97 NSW

Prepared by - T.C. Coster

For the Riverbend Residents Committee

Site Fee Increases Searching for an Explanation

Part A. Introduction

Part B. The Explanation

Part C. Non-Recurring Expenses

Part D. Asset Preservation

[Synopsis Only]

Part A. Introduction

Our submission focus is the control of site fee increases in RLLC villages.

When the Act was introduced in 2013, it was designed to improve the regulation of caravan parks offering long term site rentals upon which a resident could place a removable residence.

While caravan parks with long term site rentals remain, the overwhelming bulk of these parks are now purpose built as permanent long term home sites. Not a tent or caravan in sight!

From a municipal council or privately owned caravan park, they are now owned by large investment companies. In conducting their business this class of ownership has access to legal and financial resources homeowners can only dream of.

At the expense of homeowners, mainly self-funded retirees or pensioners, operators are now using their resources to find weaknesses in the RLLC Act, through which they can maximise their returns on investments. **Site fees** have become the main method.

Certainly, the quality of life provided in these new styled villages and the contribution to homing an ageing population is commendable, but regulation appropriate to current circumstances is now needed.

The 2013 Act has a significant weakness. That weakness is the 'By Notice site fee increase'. The Act requires an 'explanation' to be provided justifying the reason for a site fee increases, but fails to mandate the form and content of that 'explanation'

A form and content of the explanations been constructed by operators to be meaningless. No information useful to a homeowner is provided. By blinding the homeowner as to the reason and justification for increases, the operator is freely charging whatever the market will bear.

These actions are causing major distress to older long-term residents. Some are being forced out of their homes only to be replaced by newer, younger cashed up replacements yet to encounter the inequity. That defeats the overall objective of the Act; to facilitate affordable retirement housing.

The operator is entitled to operate a profitable business, but not by using unfair, predatory tactics against a community with limited resources to defend itself.

A once in 5-year opportunity now presents itself to have the Act and its operation reviewed. Your Homeowner Committee with your help is availing itself of that opportunity.

Part B. The Explanation

Synopsis

*The **explanation** required to be provided by the operator under the Act justifying a By Notice site fee increase, provides no information useful to the homeowner, in the form and content adopted by village operators for that notice.*

There are more than 70,000 people living in residential land lease communities (RLLC) in Australia, 35,000 in NSW alone. Homeowners are classified by the Operator lobby group¹ as over 55's on low-income, retirees or pensions.

¹ Source: Submission to Commonwealth Treasury 2017 consultation paper on Stapled Structures by Land Lease Living, Caravan & Camping and Manufactured Housing Industry Association.

The explanation universally provided is a concoction created by the operator lobby groups designed to hide and conceal financial information necessary for homeowners to administer their site agreements.

The Act requires amending to ensure the form and content of the explanation is fit for purpose as the homeowner's source of financial evidence relating to site fee increases and related ability to administer homeowner site agreements.

Recommended changes to the Act

1. It is recommended that Article 67 (4) (c) and (d) be amended by removing reference to the regulations and inserting in the Act, requirements for the content and form of the explanation.
2. The amended explanation content should have the following characteristics. The explanation for each expense item contributing to the 'by notice site fee increase' should contain the following information: -
 - the date or date range over which the expense was incurred,
 - A description identifying the nature and purpose of the expense',
 - A statement of the amount in \$ of the expense,
 - A mechanism to trace the expense back to source documents evidencing the expense.

Part C. Non-Recurring expenses

Synopsis

An anomaly exists in the procedure for determining site fee increases where non-recurring expenses or any other expenses of fleeting duration are included. The problem is that once a new expense is added to the retiring site fee, it stays there for ever, even after the cost, for which that expense was originally included, has been recovered and justification for its inclusion long gone. It becomes a classic 'fee for no service' issue.

The inclusion of non-recurring expenses in site fee increases is exacerbated by the form of explanation provided by operators, that conceals any useful financial information revealing the existence of such expenses and their treatment. To deal with this and other site agreement administration issues, mandated access to relevant financial data via a fit for purpose 'explanation' is required.

A similar issue arises when services are reduced, or an otherwise recurring expense is reduced. Unless these reduced expenses are reflected as a reduction in calculating a new site fee, another 'fee for no service' situation arises.

The Act makes no provision for treatment of this type of fleeting non-recurring expenses, allowing only a ratcheting up of site fees but no reduction when cost recovery or a recurring cost reduction has occurred. This anomaly in the Act requires correction.

Recommended Corrective Action

It is recommended that:

1. The Act be amended to require the operator to include, in the explanation, a statement (with evidence) of (i) non-recurring expenses (cost recovery) included in a

retiring site fee, and (ii) cost reduction associated with a reduction in services. (also refer to Part B paragraph 14).

2. The Act be amended to require retiring non-recurring expenses and cost reduction associated with a reduction in services to be credited (deducted) from the site fee before any new increase is added.
3. The Act, Division 2 - Reduction of site fees, be amended to allow a site fee reduction for retiring non- recurring expenses and other reductions in expenses additional to those listed in article 64 of the Act without first seeking a tribunal direction.
4. See also review submission 'Explanation'.

Part D. Asset Preservation Costs

Synopsis

Park operators are increasingly attempting to include the cost of preservation of park assets into site fee increases. It is the homeowners understanding that under the standard site agreement such costs are the operator's responsibility not the homeowners.

The homeowner leases a site upon which to place his home. That lease includes the right of access to partake in the village services and amenities presented to him by the operator when entering into a site agreement. At that time there is normally no suggestion or disclosure by the operator to the homeowner, that over time the homeowner will be required to pay the cost of preserving village amenities and services, the property of the operator. Potentially a serious financial commitment. Similarly, the homeowner, does not expect the operator to pay the cost of preserving the homeowners house, the property of the homeowner.

This is another case where the explanation of a site fee increase must clearly explain what costs go to justifying an increase, so homeowners can be assured cost of preserving park capital assets are not included

Recommended corrective action

1. The Act should make it clear that expenditure required to preserve the operator's capital assets in a village is not the homeowner's responsibility and does not contribute to increases in site fees.
2. The changes to the Act recommended in Part B of this submission should be implemented to permit the homeowner a clear understanding of what expenses are being claimed, and the evidence for increases that contribute to a site fee increase under a site agreement and the Act.
3. The implementation of these changes will reduce the need for homeowners, with limited resources, the need to apply to tribunals and courts to preserve their rights against the predatory actions of major corporations supported by their lobby groups.